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Standing Committee on Government Operations

Report on Bill 15: An Act to Amend the Legislative Assembly and Executive Council Act

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Northwest Territories Legislative Assembly

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July 27, 1999

THE HONOURABLE SAM GARGAN, M.L.A.
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations has the honour of presenting its Report on Bill 15: *An Act to Amend the Legislative Assembly and Executive Council Act*, and commends it to the House.

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Introduction

1.0 Introduction and Committee Review

1.1 The Standing Committee on Government Operations is pleased to report on its review of Bill 15: *An Act to Amend the Legislative Assembly and Executive Council Act.*

1.2 Bill 15 was introduced for first reading in the Legislative Assembly on March 23, 1999 by the Honourable Jim Antoine, Premier. The Bill received second reading on March 24, 1999, and was automatically referred to the Standing Committee on Government Operations for review. Under the Rules of the Legislative Assembly, the Standing Committee had 120 days to review and report on the Bill.

1.3 The Standing Committee met on several occasions to discuss background research material and legal opinions commissioned by the Committee. As well, the Committee conducted public hearings on Bill 15 in Inuvik, Rae, Yellowknife, Fort Simpson, Fort Smith and Hay River, from June 14 to July 7, 1999, beginning with the presentation of the Bill by the Premier in Yellowknife. Committee Members also met with the Chiefs and Council of the Yellowknives Dene First Nation on June 25, 1999, and attended the Dene National Assembly in Jean Marie River on July 8, 1999.

1.4 Prior to the hearings, the Committee placed advertisements in every newspaper in the Northwest Territories informing the public of the Committee's review, inviting oral presentations and written submissions and advising that applications for travel assistance would be considered by the Committee. Public service announcements were also aired on CBC Radio, and notices were placed on the community television channels, where available. Media advisories were sent detailing the communities where hearings would be held. The Committee also provided packages with boundary maps and other explanatory material about Bill 15 and an offer of assistance to appear before the Committee to over 70 identified interested parties.

1.5 This Committee report was prepared by those Members of the Standing Committee on Government Operations who participated in the public hearing process: Roy Erasmus, Chair, David Krutko, Don Morin and James Rabesca. Members of the Committee who participated support the views of the public that are expressed throughout the report. Jane Groenewegen, Seamus Henry and Jake Ootes did not participate in the public review of Bill 15 or the preparation of this report.

1.6 The Standing Committee on Government Operations would like to thank all of the individuals and organizations who made their views known to the Committee at the public hearings or by written submissions. The comments and suggestions made were thoughtful and creative and were considered carefully by the Committee during its deliberations.

1.7 Appendix 1 contains a list of witnesses who appeared before the Committee. Copies of the written submissions received are attached as Appendix 2.

Background to Bill 15

2. Electoral Boundaries Commission

2.1 The creation of Nunavut on April 1, 1999 had a significant impact on the population balance among the electoral districts remaining in the western Northwest Territories. Since early in the life of the 13th Legislative Assembly, Members of the then Western Caucus had been considering the appropriate number and distribution of seats for the new western territory. On October 18, 1996, the Legislative Assembly enacted the *Electoral Boundaries Commissions Act*, which permitted the establishment of an Electoral Boundaries Commission for Nunavut and one for the new Northwest Territories, if the Assembly so chose.

2.2 In January, 1998, Western Caucus indicated that the majority of western MLAs agreed with members of the Aboriginal Summit that the 14th Legislative Assembly general election should be based on the existing 14 western seats, given that negotiations for the development of a new constitutional structure for the new NWT had not been finalized.

2.3 However, MLAs also recognized that the 14 electoral boundaries remaining in the west after the creation of Nunavut could be subject to challenge under the *Canadian Charter of Rights and Freedoms*, because of the uneven distribution of population among the ridings. In light of this, the Legislative Assembly decided to form a NWT Electoral Boundaries Commission. The Commission was established on June 1, 1998.

2.4 The NWT Electoral Boundaries Commission was composed of NWT Supreme Court Justice Virginia Schuler as chair, Ms. Lucy Kuptana of Tuktoyaktuk and Mr. Nick Sibbeston of Fort Simpson. The Commission conducted a review of the western electoral boundaries through a community consultation process in August and September of 1998.

2.5 Under the *Electoral Boundaries Commissions Act*, the Commission's task was to review the area, boundaries, name and representation of the existing electoral districts and make recommendations for new electoral districts. Section 11 of the Act required the Commission to take into consideration factors including:

- geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of the Territory and the accessibility, size or shape of any part of the Territory;
- any special community or diversity of interests;
- the means of communication among various parts of the Territory; and
- the minimum and maximum number of Members authorized by the *Northwest Territories Act*.

2.6 As well, the Legislative Assembly directed the Commission to strive to maintain a balance between urban and rural populations, and to take into consideration the cultural and linguistic interests of the Territories and the present land claim boundaries.

2.7 On October 23, 1998, the Commission submitted its report to the legislature. The Commission recommended that two seats be added in Yellowknife, bringing the total number of seats in the Legislative Assembly to 16. The Commission explained that it was recommending minimal changes at this time. The Legislative Assembly is still undergoing change, the political landscape of the western Territory is changing, and the Commission felt that the uncertainty was a good reason to be cautious.

2.8 The Commission noted, at page 12:

> We feel that if significant changes are to be considered, they should wait until the current processes have resulted in a constitutional framework and structure of government which can be expected to last for some time. We recognize and indeed we recommend that a further boundaries commission should be established when that government is in place. That commission will be able to assess the situation as it exists at that time – a more realistic and useful exercise than trying to anticipate now what that situation will be.

2.9 The Commission's report was debated in the Legislative Assembly. A motion based on the recommendation for two additional seats for Yellowknife was defeated, as was a subsequent motion for one additional seat for Yellowknife. As a result, the composition of the Legislative Assembly remained at 14 seats.

3. NWT Supreme Court Decision

3.1 On November 25, 1998, a group of Yellowknife residents called "The Friends of Democracy" filed a notice of motion in the NWT Supreme Court. The group sought an order declaring the provisions of the *Legislative Assembly and Executive Council Act* that establish the 14 seats in the Northwest Territories to be unconstitutional and of no force and effect, because they violate the protection of the right to vote under section 3 of the *Canadian Charter of Rights and Freedoms*.

3.2 The Government of the NWT opposed the action and argued that the existing boundaries were valid. This position was supported by five aboriginal organizations who collectively were granted full Intervenor status: the Metis Nation-NWT, the Dene Nation, the North Slave Metis Alliance, the Sahtu Secretariat Incorporated and the Lutsel k'e Dene Band. These organizations are members of the NWT Aboriginal Summit, a forum of aboriginal governments and organizations which have been actively involved in discussions with MLAs and the GNWT toward the constitutional development of both public and aboriginal government structures in the NWT. The Aboriginal Summit had participated with the Western Caucus in the Constitutional Working Group, tasked with developing proposals for a new constitution and structure of government for the new NWT.

3.3 Both the GNWT and the Intervenors argued that nothing should be done to affect the status quo in the distribution of seats at this critical stage in NWT constitutional development. The Intervenors submitted that the current number of seats should not be changed until aboriginal land claims and self-government negotiations with the governments of Canada and of the Northwest Territories are resolved. They urged that section 3 of the *Charter* must be read together with, and subject to, section 25 of the *Charter* and section 35 of the *Constitution Act, 1982*, which recognize aboriginal and treaty rights, and the process rights implicit in those sections.

3.4 On March 5, 1999, Mr. Justice de Weerdt held that the boundaries of three ridings violate the right to vote guaranteed by the *Charter*: the ridings of Hay River, Yellowknife North and Yellowknife South. The population of these ridings are each more than 25% higher than the average population of all of the ridings. The court declared that the parts of the *Legislative Assembly and Executive Council Act* that establish these ridings are invalid, "being wholly inconsistent with" section 3 of the *Charter*.

3.5 Mr. Justice de Weerdt rejected the arguments put forward by the Intervenors that the

status quo should be maintained until self-government and land claim agreements are concluded. He said that the right to vote is a right of citizenship that should not depend upon the leave of a government or be withheld during government negotiations. He did not accept that in these circumstances, section 3 of the *Charter* is qualified by section 25 of the *Charter* or by section 35 of the *Constitution Act, 1982*.

3.6 Mr. Justice de Weerdt essentially accepted the rule established in other cases that an electoral district's population should not be more than 25% above the average district population. However, he did not rule invalid those ridings whose populations were more than 25% less than the average. He noted that the application was directed at remedying the under-representation of voters in Yellowknife, rather than reducing over-representation in less populated ridings. He was satisfied that the over-representation in ridings which have populations below the average is probably justified, considering the factors of geography, community history and interests, language differences, difficulties in communication with remote communities and minority representation and the difficulties and expense of travel.

3.7 Mr. Justice de Weerdt suspended his declaration, giving the Legislative Assembly until April 1, 1999 to replace or amend the invalid provisions to comply with section 3 of the *Charter*.

3.8 The Government of the Northwest Territories, with the concurrence of the Friends of Democracy and the Intervenors, requested an extension of the timeframe to allow it to implement an acceptable solution prior to the next general election. Justice de Weerdt varied his order to give the Legislative Assembly until September 1, 1999 to amend or replace the legislation.

4. Bill 15

4.1 The Government of the NWT, as the unsuccessful party to the court challenge, had the right to appeal the Supreme Court decision to the NWT Court of Appeal. The Intervenors did not have an automatic right, but required leave of the court to appeal.

4.2 The Aboriginal Summit, among others, urged the GNWT to appeal, and argued that it had in fact a fiduciary duty to do so in order to protect the rights and interests of aboriginal people. The Summit pointed out that the issues involved included the integrity of constitutional negotiations with aboriginal governments in the context of treaty, land, resources and governance negotiations. As well, it involved the appropriate role of the courts in ensuring that nothing be allowed to transpire that would frustrate the ability of the Crown to honour its commitments towards aboriginal people. The Aboriginal Summit said that for the Government to fail to appeal would be to break faith with Northwest Territories aboriginal people, and to abdicate its responsibility to ensure that constitutional development of the NWT goes forward in compliance with the Constitution read as a whole.

4.3 On March 24, 1999, the Legislative Assembly passed a motion recommending to the Executive Council that it immediately file an appeal of the Supreme Court decision. The Assembly agreed that it was imperative that a political decision on the issue be reached with, and with the concurrence of, the aboriginal governments of the NWT.

4.4 Members of the Legislative Assembly and the Aboriginal Summit recognized that time was running out in the life of the 13th Assembly, and that this limited the opportunity to develop creative solutions in full consultation with northern people. However, the Government did

have the option of requesting the federal government to amend the *Northwest Territories Act* to allow for a one year extension of the Assembly. The Government could then have requested a longer extension of the deadline imposed upon it by the NWT Supreme Court.

4.5 The Government was urged to request an extension of the term of the Legislative Assembly by several Members and by the Aboriginal Summit. This would have demonstrated leadership, and would have allowed northern people to participate in the development of a political solution to the constitutional questions raised by the NWT Supreme Court decision. In the Committee's view, it would have been a much more productive use of time and resources than other recent costly initiatives, such as the Economic Strategy Panel.

4.6 Despite the direction of the Legislative Assembly, the GNWT chose not to appeal the Supreme Court decision nor to request an extension of the term of the 13th Legislative Assembly.

4.7 The Government indicated that its legal advice was that there were no grounds to appeal the decision. However, the Government did commit to support the Intervenors' application for leave to appeal, if the Intervenors chose to proceed, and to assist with the legal costs. The Premier also informed the House, on March 26, 1999, that the legal advice received by the Government was that the Intervenors would have a good chance of being granted leave to appeal.

4.8 The same offer of support and financial assistance with respect to an appeal was also made to the Friends of Democracy.

4.9 The Government then introduced Bill 15, *An Act to Amend the Legislative Assembly and Executive Council Act*, on March 23, 1999. Bill 15 proposes to amend the legal descriptions of the electoral boundaries that are appended as a schedule to the *Legislative Assembly and Executive Council Act*, to create five additional ridings. Three of these would be in Yellowknife, one in Hay River and one in Inuvik. The Bill also revises the electoral district of Deh Cho to include the community of Enterprise, as requested by that community.

4.10 As well, Bill 15 proposes to eliminate the ten electoral districts that are now part of Nunavut and make minor amendments to other riding descriptions to change the wording "Nunavut Settlement Area Boundary" to "Nunavut - Northwest Territories Boundary" to reflect Nunavut's now official status as a territory of Canada. If passed, the amendments made by Bill 15 will come into force when the 13th Assembly dissolves in the fall of 1999.

5. NWT Court of Appeal Decision

5.1 On May 5, 1999, the Intervenors in the NWT Supreme Court case filed an application for leave to appeal and a notice of appeal of Justice de Weerdt's decision. All parties supported the Intervenors' right to appeal.

5.2 The NWT Court of Appeal heard the matter on June 16, 1999, and denied the application for leave to appeal. The panel judges indicated that they had read all of the appeal material and that the Intervenors had not established that they had any right that was violated by the NWT Supreme Court decision. If bona fide negotiations with respect to self-government and/or treaty negotiations do not continue, and section 25 or 35 rights are infringed, remedies will be available through the judicial process at that time. The Court of Appeal also found that the Intervenors did not have a reasonably arguable appeal.

What the Committee Heard

6. General Comments

6.1 The Standing Committee recognizes the legal constraints upon both the Government of the NWT and the Committee, particularly since the Government's failure to appeal the Supreme Court decision or to request an extension of the Assembly's term and the recent denial of the Intervenors' application for leave to appeal. While it is open to the Intervenors to pursue leave to appeal to the Supreme Court of Canada, the Standing Committee has no choice at this time but to proceed within the parameters of the Supreme Court decision and the September 1, 1999 deadline.

6.2 The *Northwest Territories Act* requires that the NWT Legislative Assembly be composed of at least 14 Members. If amendments are not passed to revise the invalid electoral boundaries by September 1, the Legislative Assembly will be invalidly constituted and will have no authority to act.

6.3 The Standing Committee also recognizes that if all electoral districts are to have populations that fall within +25% of the average district population, simply adding two seats to Yellowknife is not sufficient. The average riding population is obtained by dividing the total NWT population by the number of ridings. Each change to a riding impacts on the percentage variations of all ridings. Bill 15 is the option that adds the least number of seats in total while keeping all ridings within +25% of the average riding population and retaining the smaller existing ridings. It also does not require an extensive redrafting of all electoral boundaries in the NWT.

6.4 The Standing Committee took a broad view of its mandate in relation to Bill 15. As Committee Members pointed out during the public hearing process, we regret that the Government chose not to appeal the Supreme Court decision and instead introduced Bill 15. We understand that the Bill will fundamentally change the rural and urban balance in the Legislative Assembly. We know that many aboriginal governments and leaders are deeply concerned about how this change will affect their land claim and self government negotiations. For example, leaders in the Beaufort Delta have said that the potential for greater control by the larger communities makes the need more urgent to establish local control over local affairs, resources and funding. We know that many community leaders and residents are also deeply concerned about how this will affect their communities.

6.5 However, given the very real legal and practical constraints, the Committee asked witnesses at the public hearings for any proposals or suggestions that would help to alleviate their concerns, while meeting the guidelines of the Supreme Court ruling and allowing for orderly political and constitutional development in the Northwest Territories. Members were interested in hearing the public's views on governance issues not strictly within the scope of Bill 15. The urban – rural balance and the balancing of the rights of the individual with the collective rights of aboriginal people were issues of prime interest and importance to the Committee.

6.6 The public hearing process reflected the nature and importance of the subject matter to northern people. The Committee hearings were well attended in the smaller communities, where people felt that they had much to lose. The concerns expressed to the Standing Committee were deeply held and fundamental. Common themes were expressed by both aboriginal and non-aboriginal people.

7. Urban / Rural Balance

7.1 Bill 15 calls for the creation of five new ridings for the Legislative Assembly of the Northwest Territories. Three of those ridings will be in Yellowknife and one each will be in Hay River and Inuvik. People living in the smaller, predominantly aboriginal rural communities are concerned that the urban communities (Yellowknife, Hay River and Inuvik) with their combined eleven seats in a nineteen seat legislature, would control the deliberations of the Legislative Assembly of the Northwest Territories.

7.2 Many people felt that the major effect of Bill 15 would be to consolidate power in the new western territory in the urban majority. For example, **Dev Sharma** of Inuvik felt that recent events demonstrate an effort to ensure that the power-base is in Yellowknife after Division. He said that the existing number of seats should remain in place until after self government negotiations are concluded. Further, the greater economic, social and education opportunities of the urban centers and the greater mobility of urban residents should be taken into account in future decisions on electoral boundaries. There must be a greater focus on concluding self government negotiations, as this will prove to the be the quickest way to achieve equality among all northern people. When self government is achieved, the influence of the GNWT and the urban centers will decline.

7.3 **Roy Scott** of Fort Smith was concerned that with the seven seats in Yellowknife it would be possible, with two other MLAs, for the politicians from Yellowknife to control the results of any vote in the Legislative Assembly. He added "and that scares the living hell out of me".

7.4 The majority of people making presentations in Yellowknife agreed with the principle of one person - one vote put into effect in Bill 15, as outlined in Justice de Weerdt's decision. However, in many cases, adherence to this principle did not mean that the presenters were wed to the specific solution presented in Bill 15. Presenters who supported the Bill were willing to look at other solutions that did not violate the one person - one vote democratic principle. For example, **Bob Brooks** of Yellowknife suggested that affordability should be a consideration, and as long as the court order is met, a 17 or 18 seat legislature might be workable. Presenters also were willing to work with people from other regions in an inclusive process to develop alternatives.

7.5 Similarly, **Peter Shaw** of Fort Simpson, supported the principle of equality of the right to vote, but added "Our voice over the years has been a cry in the wilderness... we're just not getting the word through from the communities".

7.6 Other presenters, such as **Gord Villebrun** of the **South Slave Metis Tribal Council** and **Peter Clarkson** of Inuvik, pointed to political development in the Yukon, where the power is concentrated in the urban ridings immediately surrounding the capital of Whitehorse, as a model to avoid. It was pointed out that Aboriginal people in the Yukon have long felt estranged from the territorial politics and have little trust in the policies that emanate from the capital. The Committee heard there is a danger of this sentiment becoming entrenched among the residents of rural NWT.

7.7 Some presenters went further. **Paul Harrington** of the **South Slave Metis Tribal Council** sees "a conspiracy to take over our land and our resources, our programs, our services". He added "I have a problem with the concept that if you have a monopoly and you have a whole bunch of people living in that city, it can become a structure that is going to rule the whole

Northwest Territories. I find that offensive and not the way to build the Northwest Territories. It's just not the way we should be going".

7.8 National Chief **Bill Erasmus** of the **Dene Nation** pointed out that "the imbalance we have always feared is upon us" and was disturbed that the terms of Justice de Weerdt's ruling and the introduction of Bill 15 left no opportunity for the Dene Nation to be involved in formulating a compromise solution.

7.9 Mayor **Fred Behrens** of Rae-Edzo asked, "Why should one community be in a position to veto or disallow the needs and aspirations of the rest of the Northwest Territories or a region ...". Mayor Behrens pointed out that "one MLA representing five communities in the North Slave will have to compete with Yellowknife, for example, with seven MLAs, for the same resources that are already hard to get". He went on to say that, "Members from urban ridings do not know what life in our smaller communities is like. Most have never ventured outside their communities. Government must be more sensitive to the needs of the smaller communities".

7.10 **Nick Sibbeston** of Fort Simpson suggested that Bill 15 might pave the way for the loss of consensus government. He argued that the Electoral Boundaries Commission recommendation for two additional seats for Yellowknife was the best solution. The size of the Legislative Assembly should not be more than sixteen, so that the position of MLA will be meaningful. As well, he said, "With the proposed seat increases to Yellowknife, Hay River and Inuvik, the political power in the NWT will be concentrated in the larger centers. This will alienate the rural communities and the aboriginal peoples of the NWT. The Legislative Assembly will lose the support of the rural areas and native peoples. You will see the birth of political parties and we will lose our consensus style of government which is fashioned on the ways and approaches of the native peoples of the north".

7.11 **Andrew Gaule** of Fort Simpson emphasized that if the Legislative Assembly wishes to ensure the regions have a greater stake both politically and economically, there must be a strong regional development policy. This could be evidenced by locating more government institutions in the regions. Similarly, **Henry Beaver** of Forth Smith stressed that the GNWT must downsize government in the capital and put more jobs into the communities. These concerns were echoed by many others.

7.12 Many presenters expressed a common frustration that not enough attention is being given to the geographical size of the some of the constituencies with a smaller population. They emphasized the importance of land to aboriginal people. **Paul Harrington** of the **South Slave Metis Tribal Council** questioned why more consideration isn't given to geographical area and land base, when one MLA must keep on top of resource development and land claims in a very large area.

7.13 **Jeannie Marie-Jewell** of Fort Smith noted that the Northwest Territories is a unique place in terms of diverse culture, languages and demographics, but that Bill 15 reflects population distribution only. She felt that people in the communities would not see a purpose in holding an election or voting, if the power is concentrated in Yellowknife.

7.14 Others noted that the boundaries are based on the 1996 Census, and that Yellowknife's population has decreased since then, and since the creation of Nunavut. **Ken Heron** of Fort Smith wondered "Are they representing ghosts?".

8. Rift Among Northern People

8.1 Time and time again the Committee heard that the passage of Bill 15 would create a rift among northern peoples. The majority of the presenters the Committee heard, with the exception of those from Yellowknife, favoured maintaining the current 14 seat Legislative Assembly until such time as a constitutional compromise could be worked out between all governments, aboriginal and public, in the Northwest Territories.

8.2 **Jean-Francois Des Lauriers** of the **Public Service Alliance of Canada**, in Yellowknife sees Bill 15 as "one more shock to the system, when we should be looking forward to some stability". He pointed out that many of the larger centers have been subject to population fluctuations, especially in relation to resource development.

8.3 **John Tees** of Yellowknife was concerned that Bill 15 had the effect of setting up a government for people who move here from, and retire to, the south and that there was little concern for or relevance to the aboriginal peoples of the Northwest Territories. He added that it is time that we looked at innovative ideas for governing the north.

8.4 Several other presenters noted the transient nature of the larger centers. They noted that decisions with significant impact have made been made in the past by individuals who have come to the north for the economic opportunities but who do not have a long term commitment to the north. Some communities have experienced strong boom-bust cycles, with large numbers of people arriving and leaving in short periods of time. Similarly, the Committee is aware of several former Members of the Legislative Assembly who represented ridings in the larger centers who have left the Northwest Territories.

8.5 **Michael Nadlii**, Grand Chief of the **Deh Cho First Nations** felt that Bill 15 favours Yellowknife and ignores the realities of regional governments to come that will become the mainstay of political development in the Northwest Territories. **Dennis Helner** of Fort Simpson questioned whether a commitment to aboriginal people would be a priority of any future government. Chief **Ernest Cazon** of the **Liidlii Kue First Nation** pointed out that "instead of working together, we're fighting already".

8.6 Many presenters expressed frustration that the government is promoting partnerships with aboriginal governments on one hand, and introducing legislation that is harmful to such partnerships with the other. The changes brought about by Bill 15 will be a major blow to the trust that is necessary for meaningful partnerships. Many felt that the Government let northern people down when it decided not to appeal the NWT Supreme Court decision.

8.7 Perhaps the most stark example of the rift that is occurring was given by **Henry Beaver** of Fort Smith. He told the Committee that the Friends of Democracy were being referred to by some as the "Fathers of Apartheid". He added that people in the smaller communities, aboriginal and non-aboriginal, are united in their desire to resist Yellowknife control. Mr. Beaver also raised the suggestion of a lengthy residency requirement for the right to vote in the NWT.

8.8 **Clayton Burke** of Fort Smith felt that justice has not been served. Combined with actions of the federal government over the last few years, the recent court rulings "disenfranchised people without a shot being fired". He pointed out that recent events will have a ripple effect, and that the GNWT should have learned from the Oka crisis in Quebec.

8.9 One of the most dramatic and immediate

consequences of Bill 15 is the wedge that is being driven between aboriginal and non-aboriginal people. There is a lack of trust that the Government will fulfill its responsibilities toward aboriginal people. The Committee heard that Bill 15 will solidify the influence that the larger centers have over the indigenous inhabitants of the territory.

8.10 Several people pointed out to the Standing Committee that aboriginal people did not consent to the decision of the federal government to provide funding for aboriginal people through the GNWT. While the situation has been tolerated, many people felt that they should no longer do so. A territorial legislature controlling aboriginal funding will no longer be accepted. It was expressed that it would not matter if Yellowknife had 50 MLAs if aboriginal governments controlled their own funding, programs and services.

8.11 There was a strong sentiment that perhaps the GNWT should be bypassed, and that the expression of the inherent right to self government through parallel governments may be the only viable option. If Bill 15 passes with no formal process for healing the rift in place, aboriginal governments can be expected to distance themselves more and more from the GNWT in the future.

8.12 It probably goes without saying that under these circumstances, aboriginal people would be unlikely to support any efforts by the GNWT to gain control over land and resources or any resource revenue sharing proposals. In fact, the Committee heard this sentiment expressed over and over again. This has obvious economic ramifications for the GNWT.

8.13 In a more general sense, the Committee cannot overemphasize the need for stability in the north. We need to create jobs for our young people. We need economic development opportunities if we are to be able to pay for our social programs and the support our elders deserve. Our society will not be healthy if our people are not working and productive. Achieving political stability is the first step toward creating a healthier economic and investment climate.

8.14 Members of the Standing Committee believe that it is still possible to bring aboriginal and non-aboriginal people together in a true partnership. However, if there is no clear commitment by the GNWT to do this, the Committee was told that the consequences for the Northwest Territories will be serious. We agree. We believe that the political, economic and social fabric of the Northwest Territories is jeopardized by Bill 15 and the Government's failure to act on these issues.

8.15 In addition to implementing the Committee recommendations arising from the public review process, the Government should place a high priority on resolving land claims and self government negotiations in the Northwest Territories.

9. Political Solutions

9.1 The Standing Committee heard many expressions of legitimate concern among people in the regions about the role of the courts and the legislature. Debates are occurring in many parts of Canada surrounding decisions in which unelected judges have overruled express choices of elected representatives. Many presenters felt strongly that the courts in this case have gone too far in taking over the role of elected legislators.

9.2 The Standing Committee also heard that while Bill 15 may be one legal solution, it creates political chaos. Better solutions can be devised through consultation and cooperation. From the

views expressed by presenters, the Committee is convinced that the vast majority of people, from Yellowknife, the other larger centers and from the regions want a political solution and new ways developed for governing the north.

9.3 It was also pointed out that the court decisions did not specifically recommend Bill 15. The NWT Supreme Court did lay out parameters for the Government to follow, but the particular boundaries created by Bill 15 were chosen by the Government. The courts also made it clear that effective representation issues require political solutions.

9.4 The Standing Committee is disappointed that the Government did not display more creativity in devising solutions to the boundary issues in consultation with aboriginal people. Bill 15 will have a deep and lasting impact. This Government spent money and effort trying to convince Northwest Territories residents that we had a 'new' territory after the creation of Nunavut. This was an opportunity to truly develop a new territory 'owned' by all residents.

9.5 The Committee did attempt to find ways to make Bill 15 more acceptable to the leadership and residents of the rural Northwest Territories, and to address the concerns of aboriginal governments that Bill 15 reduces opportunities for First Nations to participate in public government. Committee Members questioned all presenters on their thoughts on other issues relating to governance that had come to the attention of Committee Members.

9.6 Most presenters expressed their preference for maintaining the status quo of fourteen seats. As **Norm Prevost** of Fort Simpson said, it would be better to "start small, stay small and build according to our needs". Presenters also questioned the cost associated with an increase in the number of Members, saying that this money is needed for education and health, not MLAs.

9.7 The Standing Committee notes that the Honourable **Michael Miltenberger, MLA for Thebacha** recommended that a Legislative Assembly of 15 Members could be accomplished within the rules set down by the NWT Supreme Court if some of the smaller constituencies were amalgamated and some residents moved to different constituencies. The Committee cannot support this suggestion. Members feel strongly that it is essential that the small constituencies be retained, and that the redistribution of voters into different constituencies should only be done in consultation with the people affected.

9.8 Generally, presenters understood that the Standing Committee was painted into a corner and had little scope to change Bill 15. However, if Bill 15 is to come into effect, presenters wanted accompanying changes. People felt that there were positive steps that could be taken now and in the long term to partially address the political impact of Bill 15.

Sunset Clause

9.9 Many presenters and Committee Members were concerned that once Bill 15 was passed, this would be the end of any meaningful constitutional development or discussions in the Northwest Territories.

9.10 Committee Members sought presenters' opinions on the inserting of a time limit for Bill 15. A time limit or "sunset clause" could allow the legislation to exist as law for only a certain period of time. The vast majority of presenters questioned by the Committee Members were in favour of a "sunset clause" being included in Bill 15.

9.11 For example, **Gary Bohnet**, President of the **Metis Nation – NWT**, thought that the addition of a "sunset clause" would make it clear that Bill 15 was a temporary fix and would be useful in ensuring that other types of solutions were looked at.

9.12 If Bill 15 were in force for only the life of the next (14th) Assembly, the GNWT, aboriginal governments and all northerners would have a target date to work towards in the formulation of a new constitution for the Northwest Territories. This is something that has not occurred before.

Cabinet Composition (2-2-2) Proposal

9.13 Committee Members were interested in hearing the views of presenters on a proposal that had been suggested to ensure regional representation on Cabinet. The "2-2-2" proposal calls for Cabinet membership to comprise two Members from northern NWT constituencies, two from southern constituencies and two from Yellowknife.

9.14 The 2-2-2 proposal is based on the previous convention that existed under which four Ministers were selected from the east (Nunavut) and four Ministers were selected from the west (the present Northwest Territories). This practice, while not formalized in law, did provide some assurances to the residents of both east and west that their needs would not be forgotten in Cabinet deliberations.

9.15 The 2-2-2 balance could be achieved through political convention, as was the case before division. Alternatively, it could be formalized, either in the Rules of the Legislative Assembly or in legislation.

9.16 This proposal received widespread support during the public hearings. The majority of presenters from all regions of the Northwest Territories felt that the proposal might provide some measure of assurance to the smaller rural regions that their voices would be heard and their needs recognized in relation to all NWT issues.

9.17 However, not all presenters agreed that the proposal should be embodied in legislation. **Gary Bohnet**, President of the **Metis Nation – NWT** did not favour mandated regional representation on Cabinet. Mr. Bohnet raised the question of what the Legislative Assembly would do if none of the Members elected from a particular region were suitable Cabinet material. In further discussions, Mr. Bohnet indicated that he did not object to regional representation through political convention.

9.18 Similarly, **Robert Slaven** of Yellowknife felt that the suggestion for regional representation was reasonable, but that legislation would be too inflexible and the proposal should be restricted to political convention.

Constitutional and Electoral Reform Commission

9.19 While the addition of a "sunset clause" to Bill 15 may provide some comfort to territorial residents, it is only a temporary measure to obtain more time. Committee Members also realized that there must be a process in place to establish a new constitution or form of governance for the Northwest Territories, and discussed options to ensure that a process be instituted.

9.20 **Gary Bohnet** of the **Metis Nation – NWT** proposed that the Committee develop legislation providing for an independent body that reports to the Aboriginal leadership as well as to the Legislative Assembly to settle electoral and constitutional issues. Committee Members agreed with Mr. Bohnet's assessment that the Commission should have a relatively broad mandate. As well, there must be a commitment to

the process by both the GNWT and aboriginal governments and there must be time constraints placed on the Commission.

9.21 Several presenters emphasized that any recommendations or proposals from a Commission must not be restricted to the approval of MLAs. There must be a process established to allow ordinary residents of the Northwest Territories to vote on the recommendations of the Commission.

Additional Issues

9.22 Many other issues were brought to the attention of the Standing Committee on Government Operations during their public hearings. These included such issues as changing the name of the riding of Nahendeh to reflect its inclusion in the Deh Cho region, changing the names of constituencies to include 'territory' to more clearly recognize aboriginal governments, creating a separate constituency for Rae-Edzo and creating constituencies in Inuvik with members elected at large. As well presenters suggested creating constituencies reflecting traditional land use, creating aboriginal or cultural constituencies and establishing guaranteed aboriginal and/or regional representation.

9.23 Most of these requests cannot be accomplished at the current time, within the limitations imposed by the NWT Supreme Court decision and the federal *Northwest Territories Act.* However, Committee Members agree that these are valid and worthy of consideration within the scope of further constitutional and electoral reform.

Committee Recommendations

10. General Comments

10.1 Members of the Standing Committee echo the words of the Premier in his statement in the House of March 24, 1999:

> Given the unique opportunities that we have, it is unfortunate that we have become sidetracked in a divisive debate over electoral boundaries. This debate has the potential of setting back everything we have been trying to build for the last 30 years, derailing the hard work of trying to frame joint priorities and to assert our independence from DIAND's rule. No one northern group can win at this debate but we can all lose.

10.2 Members of the Standing Committee regret that it has come to this. It is shameful that issues so central to the development of the north and the future of all northerners – aboriginal and non-aboriginal – are being decided by the courts. They should be decided by northern people. The Government had the opportunity to demonstrate true leadership and chose not to do so. In the words of one presenter "We feel betrayed".

10.3 The Constitutional Working Group had been working on the development of constitutional and governance arrangements that would be acceptable to northerners and that would allow us to move forward as a strong and united territory. Consultations were put on hold in late 1998 pending further progress in the self-government arena. However, there is now a more urgent need to develop a principled means for public and aboriginal governments to work together, and to find a balance between individual and collective rights.

10.4 The NWT Supreme Court decision, the introduction of Bill 15 and the impending dissolution of the Assembly in a few short months combine to have serious consequences. Unrealistic timeframes and pressures have been placed on all parties. The Standing Committee is very concerned about the long term effects of this situation. The potential is very evident for relationships to be permanently impaired, trust destroyed and communities pulled farther apart.

10.5 As a result, it is the view of Committee Members that Bill 15 must be considered a temporary, stopgap measure only. It may be a necessary step in light of the current legal dilemma faced by the Legislative Assembly, the lack of action by the Government and now the lack of time available. However, it should remain in place only until a more workable and acceptable long term solution can be developed. Further, this Legislative Assembly must ensure that a process is set in motion so that a workable solution is reached soon, in partnership with all northern people, within the life of the 14th Assembly.

10.6 The Committee has several recommendations which, taken together, will help to provide some assurance that the voices of people in the regions will be heard in the 14th Assembly, and ensure that momentum is carried through the next election and work on resolving these issues carries forward.

10.7 This Assembly cannot shrink from its responsibilities and hide behind court decisions. It must make responsible political decisions now for the future. We do not have the luxury of postponing these issues for the deliberations of a future Assembly. The Committee's recommendations will institute a process so that work may begin on constitutional and electoral reform issues immediately after the upcoming election and so that some resolution may be achieved during the life of the 14th Assembly.

11. Sunset Clause

11.1 Committee Members feel strongly that Bill 15 must be an interim measure only, to allow time for a satisfactory solution to be developed.

11.2 A sunset clause would provide that the electoral districts put in place by Bill 15 would be repealed on dissolution of the 14th Legislative Assembly. With no boundaries to take their place, the Government would be required to act. The sunset clause would send a clear message to the Government of the Northwest Territories that it is urgent that it work with aboriginal and community governments and other stakeholders to reach agreement on governance in the NWT during the 14th Assembly.

11.3 The Committee is aware that constitutional questions may be raised if a sunset clause is implemented and the possibility exists for a constitutional 'vacuum' at some point in the future. However, this is an area of the law that is far from clear. There is no need for an unconstitutional situation to arise, as the Committee intends, and fully expects, that action will be taken to resolve governance issues in a manner satisfactory to northern people during the life of the 14th Assembly. In the Committee's view, legislatures have a duty to act boldly when necessary.

11.4 The Committee also recognizes that a legislature cannot bind itself. If a new system is not established through legislation before the end of the 14th Assembly, the Government would have the option of introducing a Bill to remove the sunset clause. The boundaries established by Bill 15 would then remain in place for the election of the 15th Assembly. However, this would at least be a very public action, and subject to public debate. The Government would be accountable to the residents of the Northwest Territories for its failure to resolve these issues and introduce

reforms.

11.5 Members raised the concept of the sunset clause with the Premier during the clause by clause review of Bill 15 on July 26, 1999. The Rules of the Legislative Assembly allow Bills to be amended during a Standing Committee review if the Minister sponsoring the Bill concurs with the amendment. However, Committee Members felt that it would be more appropriate for such an amendment to be dealt with on the floor of the House, during the review of Bill 15 in Committee of the Whole. This would allow a full public debate to occur, in which all Members could participate.

11.6 The Committee recommends

that Bill 15 be amended in Committee of the Whole to provide that section 2 and Schedules A and B of the *Legislative Assembly and Executive Council Act* are repealed upon the dissolution of the Fourteenth Legislative Assembly.

12. Political Accord

12.1 Western MLAs and the Aboriginal Summit concluded over a year ago that a political accord on western territory issues is urgently needed. On June 4, 1998, the Legislative Assembly passed a motion "that the Government of the Northwest Territories begin discussions with the Government of Canada and elected leaders representing all the western Northwest Territories regional Aboriginal governments as may be represented by the Western NWT Aboriginal Summit, to negotiate a political accord which would set out the ongoing relationship between the parties". The Assembly also requested that the parties make every effort to reach an agreement on a political accord by October 30, 1998.

12.2 A political accord would set out the roles and relationships between the parties, and set a framework for ongoing cooperation on constitutional and governance issues and major GNWT policy initiatives.

12.3 The political accord contemplated in June 1998 was not developed, for various reasons including the withdrawal of the federal government from the discussions. However, during the past several months, members of the Aboriginal Summit and Western Caucus had agreed that work on a political accord should be renewed between the two parties and agreement reached as soon as possible.

12.4 Committee Members had expected that with the issues raised by the electoral boundaries court decision, the Government would make increased efforts toward reaching a political accord that could be presented as a companion document to Bill 15. That has not happened. At the pace at which discussions are proceeding, an accord may not happen for a very long time.

12.5 A political accord could provide a structured mechanism for aboriginal governments to have meaningful input into GNWT decisions that affect aboriginal people. A political accord will eventually be overtaken by governance reforms, but until they are in place, an accord should be a key component of governing in the new western territory.

12.6 Committee Members believe, however, that the GNWT must demonstrate some real commitment, effort and resources to the process. The Standing Committee has been asking for a GNWT workplan with respect to the political accord since early June, 1999. If the GNWT is not going to focus its efforts on concluding an accord, Cabinet should make that clear.

12.7 If the GNWT is committed to the process,

negotiations should take into account the recommendations of this Committee later in this report for legislation establishing a Constitutional and Electoral Reform Commission. The political accord process would be an appropriate mechanism for the GNWT and aboriginal governments to develop terms of reference for the Commission for implementation in legislation this fall.

12.8 The Committee recommends

that the Government of the Northwest Territories develop a workplan with clear timelines for the negotiation of a political accord with NWT aboriginal governments for review by the Standing Committee on Government Operations by September 1, 1999.

13. Legal Reference

13.1 Committee Members feel strongly, as outlined earlier, that issues as fundamental as the governance of the new Northwest Territories must be decided by northern people. However, there is now a Northwest Territories Supreme Court decision suggesting that the right to vote protected by section 3 of the *Canadian Charter of Rights and Freedoms* is not to be read together with the sections which protect and guarantee aboriginal and treaty rights. This is of great concern to aboriginal people because of the significance placed on the inclusion of these rights when the Constitution was repatriated in 1982. All sections of the *Charter* must be given equal weight.

13.2 Leave to appeal was not granted to the Intervenors, and the Government chose not to appeal. This decision is therefore binding in the Northwest Territories, and will colour all future discussions and negotiations with aboriginal people.

13.3 The interpretation of section 25 of the *Charter* and section 35 of the *Constitution Act, 1982* is central to the relationship between governments and aboriginal peoples. This is as true in the rest of Canada as it is in the Northwest Territories. Committee Members believe that this issue must be clarified. Since the Government did not appeal the court decision, it has no further avenue in this case. However, the question should be referred to a higher court. A reference to the Supreme Court of Canada would clarify the legal principles involved for aboriginal people and all levels of government throughout the country.

13.4 The Committee recommends

that the Government of the Northwest Territories urge the federal government to commence a legal reference without delay before the Supreme Court of Canada;

and further, that the Court be requested to clarify the interpretation of section 25 of the *Canadian Charter of Rights and Freedoms* and section 35 of the *Constitution Act, 1982* in relation to the other provisions of the *Charter* and the Constitution of Canada, and in particular, section 3 of the *Charter*;

and furthermore, that the Government of the Northwest Territories provide the Standing Committee on Government Operations with a proposed question to be provided to the federal government by October 1, 1999.

14. Regional Voice

14.1 One of the consistent messages heard by the Committee in communities outside Yellowknife was that if Bill 15 passes, there must be new mechanisms developed to ensure that the messages and issues specific to people in the regions are duly considered by the next Legislative Assembly.

Cabinet Composition (2-2-2) Proposal

14.2 As discussed, Committee Members heard views from many presenters on the 2-2-2 proposal, which would ensure regional representation on Cabinet. The proposal has also received support from some Cabinet Ministers. This balance could be achieved through political convention, or it could be formalized, either in the Rules of the Legislative Assembly, or in legislation, in the *Legislative Assembly and Executive Council Act.*

14.3 Some individuals preferred that the proposal be implemented through convention, so that flexibility is maintained. However, Members of the Standing Committee feel strongly that the 2-2-2 proposal must be embodied in legislation if it is to provide some degree of assurance to residents in the regions that they will be adequately represented on Cabinet. Both political conventions and the Rules of the Assembly are too easily changed, and such changes might more easily escape public notice. Legislation is not completely inflexible; it can be changed by the Assembly when necessary. However, to do so, a Bill would have to be introduced, ensuring a level of public debate on the issue.

14.4 Two Cabinet Ministers should be selected from the constituencies of Nunakput, Inuvik West, Inuvik East, Mackenzie Delta, Sahtu and North Slave. Two should be selected from the constituencies of Nahendeh, Deh Cho, Hay River South, Hay River North, Thebacha and Tu Nedhe. The remaining two would be selected from Yellowknife.

14.5 The Standing Committee also considered the size of Cabinet in a 19 Member Assembly, if Bill 15 is passed. It is the Committee's view that the size of Cabinet should remain at six. The *Legislative Assembly and Executive Council Act* should be amended to ensure that the number of Members on Cabinet does not increase. In the opinion of Committee Members, this will provide a better balance between Cabinet and Ordinary Members, and the workload for six Ministers will be manageable. Those Members who feel that the duties are too onerous are not required to put their name forward for selection for Cabinet.

14.6 The Committee recommends

that the Government introduce legislation to amend the *Legislative Assembly and Executive Council Act* to provide that the Executive Council of the Northwest Territories consists of six Members;

and further, that the amendment to the *Legislative Assembly and Executive Council Act* require that there be regional representation on Cabinet as follows:

- **two Cabinet Members selected from the constituencies of Nunakput, Inuvik West, Inuvik East, Mackenzie Delta, Sahtu and North Slave;**
- **two Cabinet Members selected from the constituencies of Nahendeh, Deh Cho, Hay River North, Hay River South, Thebacha and Tu Nedhe; and**
- **two Cabinet Members selected from constituencies in Yellowknife;**

and furthermore, that the Government

introduce the amendments to the *Legislative Assembly and Executive Council Act* to implement regional representation on Cabinet and to specify the size of Cabinet for passage before dissolution of the 13th Legislative Assembly.

Models of Governance for Regional Input

14.7 The Standing Committee also heard clearly that in addition to the Cabinet composition proposal and measures for regional economic development, models for governance should be examined that provide a measure of control to smaller populations outside of the major centres.

14.8 Various suggestions were made to the Standing Committee for further consideration. For example, an aboriginal or regional "Senate" like body could be created, to scrutinize proposed legislation and policy. Provisions could be put in place for a 'regional veto' over actions that could be detrimental to a region.

14.9 There are many models that could be examined for adaptation to the Northwest Territories. For example, Australia's federal Senate is composed of equal representation from the six states. There are 76 Senators, 12 from each state, regardless of the size, and two from each territory.

14.10 The Senate was constituted in this manner to ensure that the interests of less populous states would not be diminished in a parliament where the majority of the Members of the House of Representatives come from the two largest states. It gives the small states some protection from domination of the majority. Its main function is as a 'house of review', and in practice, Bills are amended frequently. The Senate also has nearly equal legislative powers to the House of Representatives, except that it cannot initiate or amend money bills.

14.11 Similarly, the upper house of the South African Parliament, called the National Council of Provinces, consists of nine provincial delegations. Each province has 10 delegates, regardless of the province's size. Delegates to the NCOP come from the provincial legislatures.

14.12 Any Bill passed by the National Assembly must proceed to the NCOP. At that stage, the process varies according to whether the Bill is one that affects provinces, does not affect province or affects the constitution. Matters that do not affect the provinces include national functions such as defence.

14.13 Where a Bill does not affect provinces, each delegate in the NCOP has one vote. Amendments made go back to the National Assembly for acceptance or rejection. Where a Bill affects provinces, each province has one vote. In other words, there must be consensus within each province on the Bill.

14.14 The Constitutional Working Group, the Commission for Constitutional Development (the Bourque Commission) and other groups have carried out a great deal of work on models that might be considered for the NWT. Other options raised during the Committee hearings include creating an aboriginal "Ombudsman" to be independent of the legislature, resourcing aboriginal governments to perform the role of scrutinizing proposed legislation, and creating guaranteed aboriginal seats in the Assembly.

14.15 Members of the public expressed their conviction throughout the Committee hearings that there is a vast range of possibilities to create a model of governance that truly fits the north. Members of the Standing Committee agree. The Committee recommends broad constitutional and electoral reform later in this report, and detailed

consideration should be given during this process to models for regional control appropriate to the north.

15. Aboriginal Constituency

15.1 Early in the Committee's review of Bill 15, the Committee retained outside legal counsel specializing in aboriginal and constitutional issues to provide an opinion on the constitutionality of creating a separate aboriginal constituency within the City of Yellowknife. Members of the Committee considered that separate representation may be necessary to ensure that the voice of aboriginal people in Yellowknife is effectively heard, particularly in relation to the development of self-government and how services to urban aboriginal people are planned, funded and delivered.

15.2 The idea of ensuring separate aboriginal participation in legislatures is not new. The Maori in New Zealand, for example, have had four guaranteed electoral districts since 1867. Aboriginal electoral districts have been suggested for many years in the federal system, and were recommended by the federal Committee for Aboriginal Electoral Reform and the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) in 1991.

15.3 In its report "Reforming Electoral Democracy", the Lortie Commission suggested that while aboriginal seats should not be guaranteed, aboriginal constituencies should be created by a process guaranteed in the *Canada Elections Act*. This would provide for the creation of aboriginal constituencies in provinces whenever sufficient numbers of aboriginal voters choose to register on an aboriginal voters' list. The Commission made a series of recommendations detailing how the constituencies would be created. The Commission commented that "the creation of aboriginal constituencies would build upon the Canadian tradition of accommodating both individual and collective rights".

15.4 The Committee emphasizes, as did the Lortie Commission and the Committee for Aboriginal Electoral Reform, that aboriginal representation is not to be considered as an alternative to aboriginal and treaty rights, including the inherent right of self-government for aboriginal people. Rather, effective representation in the NWT Legislative Assembly and self-government can be complementary forms of representation.

15.5 The Committee's counsel, Mr. Kenneth Tyler, held the view that one of the proposals suggested by the Committee could be implemented. The proposal would re-divide the existing four Yellowknife ridings into six constituencies with approximately equal non-aboriginal population, and permit aboriginal voters resident in the city to elect one member-at-large. Aboriginal voters would have the option of voting in either the aboriginal "at large" constituency or in the Yellowknife constituencies in which they reside.

15.6 Mr. Tyler provided a detailed letter to the Committee. In his opinion, the Legislative Assembly of the Northwest Territories has the competence to implement the proposal under the existing *Northwest Territories Act*. Legislation creating an aboriginal constituency could be justified under the *Canadian Charter of Rights and Freedoms* if it could be shown that the special situation of aboriginal people in Yellowknife requires particular measures to ensure their effective representation.

15.7 Mr. Tyler also carried out some work on the Committee's behalf examining the legislative amendments that would be needed, in particular to

the *Elections Act* and the *Legislative Assembly and Executive Council Act.*

15.8 Members of the Standing Committee were encouraged by the options available for the creation of an aboriginal constituency. Committee Members recognize that widespread consultation would be required, and the proposal is not one that could be implemented in the short time left in this Assembly. The aboriginal constituency model has merit, however, and should be examined closely during the life of the next Assembly, within the context of broader electoral and constitutional reforms.

16. Constitutional and Electoral Reform Commission

16.1 It is clear to Committee Members that a process must be instituted to ensure that constitutional and governance issues are given full attention during the 14th Assembly. There is a great deal of work on the issue to build on. If we are creative, a model unique to the north can be designed and there is a vast range of experience throughout the world from which to learn.

16.2 At the moment, the Legislative Assembly is constrained by the authority provided to it in the federal *Northwest Territories Act*. However, if work on constitutional and electoral reform begins early in the life of the 14th Assembly, there should be sufficient time to have any necessary amendments to the *Northwest Territories Act* passed by federal Parliament so that Northwest Territories legislation can be enacted for the 15th Assembly.

16.3 What the Committee proposes is a large task. Other groups have made progress on developing these issues in the past, but there is now increased urgency.

16.4 The 13th Assembly should pass a Bill to establish an independent Constitutional and Electoral Reform Commission, to begin its work as soon as possible.

16.5 The objective of the Commission would be to develop a comprehensive constitutional and electoral reform proposal for consideration by the public at a constitutional conference.

16.6 The basic elements of a formal constitution, as outlined by the Bourque Commssion, are:

- The name and description of the geographic area to be covered by the constitution,
- A definition of the people to be governed by the constitution, together with a statement of their unique and shared experiences, values, interests and aspirations,
- Statements of any special rights and freedoms enjoyed by people governed by the constitution,
- A description of the orders of government, if any and the ways authority and responsibility are divided among the orders of government,
- The kinds of institutions which will make laws, decisions and settle disputes in these orders of government,
- How people are appointed or elected to serve in these governing institutions, and
- The way in which a constitution is amended.

16.7 The mandate of the Commission should be broad and enabling. Much can be learned from the work that has been done on these issues to date by previous bodies. The Commission would be expected to carry out public consultations and to keep the public informed of its progress. Some of the issues that the Committee would expect to be before the Commission for consideration include options for:

- regional and aboriginal representation in the

NWT legislature,
- multi-member constituencies,
- aboriginal constituencies,
- guaranteed aboriginal representation,
- constituencies which reflect traditional land use,
- a regional government structure,
- the creation of an aboriginal Ombudsman,
- providing a choice for aboriginal people resident in urban centers to vote in their home ridings, and
- structures for regional autonomy and the protection of regional interests, including options such as a regional Senate, weighted votes on money bills, requirement for regional approval on key legislation or policy affecting them.

16.8 Membership of the Commission should reflect a fair representation of northern people, developed in cooperation by the GNWT, aboriginal governments and other stakeholders. The Commission should comprise equal numbers of aboriginal and non-aboriginal people, with representation from women. It should be small enough to be a workable size. It must be properly resourced, and its members must be able to commit the time necessary to focus on such a large and complex task to its completion.

16.9 The Standing Committee recognizes that the work of the Commission will entail costs, and that fiscal restraint will be a key theme of the 14th Assembly. However, this will be an investment in our future. The financial implications if nothing is done to resolve the constitutional gridlock are tremendous.

16.10 The Committee heard during the public hearings, and it is public knowledge, that there will be no resource revenue sharing arrangements if the rift caused by Bill 15 is not healed. Aboriginal people will not support any devolution to the GNWT under these circumstances. People in the communities and regions feel a great animosity toward Yellowknife, in particular. Never has it been more important to address these issues in a comprehensive and meaningful fashion. The risk lies in not acting.

16.11 In the past, when the GNWT has commissioned reports, after all the work has been completed and the recommendations made nothing is done. There is no process for moving forward.

16.12 Other jurisdictions have held binding referenda on questions of fundamental constitutional or electoral reform. For example, a binding referendum in New Zealand in 1993 resulted in the adoption of a mixed member proportional electoral system for the country. British Columbia, Alberta, Australia and Ireland each have legislation requiring a binding referendum to be held before any constitutional amendment is approved. The Standing Committee agrees with this approach.

16.13 The recommendations of the Constitutional and Electoral Reform Commission should be presented to the public at a broad-based constitutional conference. The main goal of the conference should be to develop a question or set of questions on constitutional and electoral reform to take to all Northwest Territories voters for approval in a binding referendum. The Government should then be required to take steps to implement the results of the referendum as soon as practicable.

16.14 The Commission should recommend, for resolution at the conference, the percentage of voters required to approve the referendum proposals. The Commission may also wish to consider whether a mechanism for regional approval might be appropriate.

16.15 In the Committee's view, the reform

process should be able to be concluded within the life of the 14th Assembly with dedicated effort, adequate resources and a strict timeframe. Members also feel strongly that there are too many ongoing strategies, forums, consultations and other 'tables'. The Minister's Forum on Education recently completed its report and was followed by a Minister's Forum on Health and Social Services. An Economic Strategy Panel has been appointed to carry out consultations. There have been various formal and informal constitutional discussion tables.

16.16 With a small population and a finite number of individuals available to participate, issues become fragmented and able people are pulled in too many directions. It is time for more focus. The Committee encourages the Government to scale down its initiatives wherever possible, and concentrate its attention over the next four to five years to resolving the critical constitutional questions.

16.17 The Committee recognizes that any significant proposals for change during the next Assembly will require the concurrence of the federal government, assuming amendments to the federal *Northwest Territories Act* would be required. If the Commission can begin its work in early 2000, the public should be able to consider its recommendations at a constitutional conference by June 2002. This would allow a referendum and necessary federal amendments to be completed before the following election.

16.18 The Committee recommends

that the Government introduce legislation for passage during the 13th Legislative Assembly to establish a Northwest Territories Constitutional and Electoral Reform Commission;

and further, that the legislation give the Commission a broad mandate and require the Commission to develop a comprehensive constitutional and electoral reform proposal for consideration by the public at a constitutional conference by June 30, 2002;

and furthermore, that the legislation require that recommendations for reform be submitted for approval by all Northwest Territories voters in a binding referendum;

and furthermore, that the legislation require that any electoral and constitutional legislative changes approved by Northwest Territories voters in a referendum be introduced for passage prior to the dissolution of the 14th Assembly.

16.19 The recommendations made by the Standing Committee in this report reflect the views and suggestions made by the public to the Committee during the public hearing process. The recommendations should be made a priority of the 14th Assembly. Members of Cabinet have repeatedly said in the House that that they want a political solution. To quote the Premier, "building understanding of the issues and reaching a political resolution is critical if we are to move beyond this issue as a unified new territory".

16.20 If the Government chooses not to support the Standing Committee recommendations, it has a duty to all northern people to present other options now for a cooperative process to resolve the current crisis. If it does not, it risks seeing the territory break apart. There is a very real and present risk that the rift created by Bill 15 will widen and the political, social and economic harmony shared by all of the people of the Northwest Territories will be seriously jeopardized.

List of Presenters – Appendix 1

Public Hearing in Inuvik, June 15 & 16, 1999

Private Citizens-	Mr. Eric Braaethen
	Mr. Dave Kaufman
	Ms. Mary Beckett
	Mr. Dev Sharma
	Mr. Peter Clarkson
Gwich'in Tribal Council-	Mr. Robert Charlie

Public Hearing in Rae, June 17, 1999

Hamlet of Rae-	Mr. Fred Behrens, Mayor

Public Hearing in Fort Simpson, June 22, 1999

Private Citizens-	Mr. Gerald Antoine
	Mrs. Karen Sibbeston (for Nick Sibbeston)
	Mr. Dennis Nelner
	Mr. Andrew Gaule
	Mr. Peter Shaw
	Mr. Robert Villeneuve
Town of Fort Simpson-	Mr. Norm Prevost, Mayor
Liidlii Kue First Nation-	Mr. Ernest Cazon, Chief
	Mr. Jonas Antoine, Sub-Chief
Deh Cho First Nation-	Mr. Michael Nadlii, Grand Chief
MLA Nahendeh-	Mr. Jim Antoine

Public Hearing in Yellowknife, June 23 & 24, 1999

Private Citizens-	Mr. Larry Pontus
	Mr. Sandy Holmes
	Mr. Bob Brooks
	Mr. Bob MacQuarrie
	Mr. Bill Enge
	Mr. David Wind
	Mr. John Tees

Public Service Alliance of Canada-	Mr. Jean-Francois DesLauriers
Dene Nation-	Mr. Bill Erasmus, National Chief

Public Hearing in Fort Smith, July 5, 1999

Private Citizens-	Mr. Henry Beaver Mr. Clayton Burke Ms. Jeannie Marie-Jewell Mr. Ib Christianson Mr. Tim Heron Mr. Roy Scott
Metis Nation-	Mr. Gary Bohnet, President
South Slave Metis Tribal Council-	Mr. Gord Villebrun, Vice-President
MLA Thebacha-	Mr. Michael Miltenberger

Public Hearing in Hay River, July 6 & 7, 1999

South Slave Metis Tribal Council-	Mr. Paul Harrington, President

Written Submissions – Appendix 2

Mr. Fred Behrens, Mayor, Hamlet of Rae

Mr. Nick Sibbeston, Fort Simpson

Mr. Gary Bohnet, President, Metis Nation

Mr. Robert Slaven, Yellowknife

Mr. Garth Wallbridge, Yellowknife

Mr. George Roach, Mayor, Town of Inuvik

Mr. Fred Behrans
Mayor, Hamlet of Rae

Presentation to the Electoral Boundaries Committee June 17, 1999

I would like to welcome the panel to Rae-Edzo today to listen to our residents regarding this very important issue. I would also like to say to our residents that these people are here to listen to your comments and concerns regarding the electoral boundaries. Does the Legislative Assembly add more seats to Yellowknife, Hay River and Inuvik and could we get a new seat for Rae-Edzo alone with one MLA for the rest of the region. It is important that you are heard so I encourage you to please come forward and tell the panel your comments.

Now to start my presentation I thought it best to take you back in history a few years. If nothing else to demonstrate the support this community has given the Territorial Government over the years with very little recognition coming from the government.

Lets now go back to the mid 1960's, the beginning of this Government. One of the first decisions made was to destroy the Rae resident's way of life, by forcing the residents to move from this present site of Rae to the site we now know as Edzo. There were good intentions for this, our town site had very bad drainage and higher than normal health concerns. However the people would not move. It was hard to accept such a move inland when we have always lived on or near the lake. Some people did move, only because of no housing in Rae. Resulting in the establishment of Edzo.

The next important event that shows our support is the establishment of one of the first incorporated municipalities under the Municipal Act of the time. This was an important event because this was basically for the first time there was a legally incorporated structure for the residents to use and develop. This gave tremendous support for our new Territorial Government and in return we were forgotten. While other communities were getting increases for operational funding our levels were frozen. For approximately five years Rae-Edzo never received an increase above the original funding levels. This is an impact that is still evident today. We do not have roads and streets we have dirt paths. This is one example how the lack of funding has hit our community. Of course we are now seeing increased funding but only as a

result of a combined lobby effort of the previous Mayor and our MLA. We have however had to fight tooth and nail to get what rightfully we deserve, when other communities take this for granted.

I could go on for hours telling how this Government has time and again forgotten this region and community. I would however like to give one more example of how this community is forgotten. That is our airport, as most of you remember Rae-Edzo has for many years lobbied for an airport. Always with the same come back, we are to close to Yellowknife. The community has realized this argument does not hold credence. Over the past three years the community on it's own, is building the airport. We have had considerable opposition especially from the Yellowknife business sector and the Department of Transportation. We have prevailed and this year we should complete this project.

In the History of the Territorial Government, the North Slave region has been a very important component. We elected one of the first MLA's to ever sit as an elected member. However at the same time the North Slave region is the only region that has only had one MLA ever get to the Executive Council level. So again I would say we are the forgotten region.

This year we have seen division take place and a new Executive Council appointed. Our MLA made an attempt for a position on Council but unfortunately was not considered. The interesting note to this is, that our Premier publicly stated after the new Cabinet was in place that we now have an Executive Council that represents every region of the NWT. My response to this is, it really shows we are the forgotten region.

Let us now review what has transpired over the last few months that has lead to you coming to Rae-Edzo today. During the fall of 1998 the electoral boundaries commission toured the communities of the western arctic to get the views of the residents. At that time our Mayor presented a workable solution to the problem of under representation in the larger centers, specifically Yellowknife. Our position then, was the need for three new seats to be established. One for Yellowknife, one for Rae-Edzo and one for some other area. This was an acceptable solution especially by the Yellowknife residents. Our MLA again stressed this solution during the last days of the Assembly in Dec./98. Also the Honorable Charles Dent brought forward a

motion that could have solved most of the controversy. This was defeated. As you know this lead to the court case with the Friends of Democracy making this Government now scramble to find a solution.

Our community and region have always maintained that we need to have one seat for Rae-Edzo and one for the rest of the Region. I believe we do have good arguments for this. Even though we are not large enough to sustain the magic percentage that is now imposed by the Court.

Currently what is proposed is for Yellowknife to get three more seats, Hay River and Inuvik one more each. Bringing the total number of seats for the Legislative Assembly to nineteen. This decision is strictly based on numbers and now lets review those numbers. The population of Yellowknife using the 1996 census shows 17,275 with Hay River at 3611 and Inuvik at 3296. Now lets take an average number of residents that will be represented by each member including the new proposed members. Yellowknife will have an average of 2467 residents per riding. Hay River will have 1805 residents per riding and Inuvik will have 1648 residents per riding.

This will now make the North Slave riding with 2471 residents the second largest riding in the NWT. This riding also includes 5 communities all with their own needs and aspirations with one MLA representing them. Considering this one MLA must compete against for example, Yellowknife, which will have seven MLA's, for the same resources that are now hard to get. Our communities have many problems. We have one of the highest unemployment rates, one of the lowest literacy levels and as a result have one of the highest levels of income support dependencies in the Western Arctic. How are we ever to expect fair and reasonable representation when we see this vast diversity that this Government is proposing.

Now for a moment lets look at the Global picture. With this proposal I see that the urban ridings will now have a considerable majority of representation over the rural areas. There will be eleven seats representing the vast majority of the population base with only eight representing the rural areas. I feel this is not responsible Government. Why should one community be in a position to veto or disallow the needs and aspirations of the rest of the NWT or of a region and this could easily happen. Members from urban ridings do not know what life in our smaller communities is like. Most have never ventured

outside their communities. Government must be more sensitive to the needs of the smaller community.

As we look towards the future, Rae-Edzo and the entire North Slave Region could and should become a vibrant and prosperous region and community. Many new and exciting events and opportunities are becoming reality. The most significant is the Land Claims and Self-Government agreement. This one document will change the relationship between our Region and the Territorial Government. We will be in control of our future and the Territorial Government must be in a position to work together in a partnership between the two Governments that will benefits all residents. More importantly the Territorial Government must ensure we have proper representation.

As I have stated previously, the Community of Rae-Edzo and the North Slave Region maintain our need to have two representatives in the Legislative Assembly. This is critical to ensure the rural ridings are not forgotten and left behind. I feel by redistributing the proposed new ridings this can be accomplished. I would suggest that you consider allowing the same number of new seats as proposed in Bill 15 but to have 2 new seats for Yellowknife and one for Rae-Edzo. This I think will be more expectable to the entire NWT as the urban areas will not have as large of a majority and it would allow for more aboriginal voice where it is needed most.

In closing I feel this could be a very workable solution and would like to thank the Panel for taking the time to come to Rae-Edzo and listen to our concerns. This is a very important period in our development and we must strive to ensure the interests of all residents are best reflected in the decision, not just local interest groups with their own hidden agenda's.

Thank You

To Standing Committee on Gov't Operations
Legislative Assembly of NWT

I thank you for the opportunity of serving on the NWT Boundaries Commission last summer. We had an opportunity to visit many communities in the western NWT and so feel that the Commission Report provides the best solution for the issue of division & constituencies for the new western NWT.

One year later I feel that the recommendation to add 2 seats to YK is a good decision. Yellowknife should not get more than 2 new seats.

Also Hay River & Inuvik should not get additional seats than what they presently have.

My biggest concern as to why the Legislative Assembly should not have more than 16 members is that MLAs need to have a busy & sufficient work to keep them occupied & the position meaningful. Otherwise, idle hands with lots of energy will result in efforts going into Party politics.

With the proposed great increases to YK, Hay River & Inuvik the political power in the NWT will be concentrated in the larger centers. This will alienate the rural communities & the aboriginal

peoples of the N.W.T. The Legs. Assembly will lose the support of the rural areas & native peoples. You will see the birth of political parties & we will lose our consensus style of government which is fashioned on the ways & approaches of the Native peoples of the North.

With best wishes

Nick Sibbeston.

PRESENTATION BY GARY BOHNET, METIS NATION--NWT, TO THE GOVERNMENT OPERATIONS COMMITTEE, JULY 5, 1999

My name is Gary Bohnet. I am the President of the Metis Nation--Northwest Territories.

Your Committee has said you feel you have an obligation to conduct hearings on Bill 15, which will establish five additional seats in the Legislative Assembly. We appreciate that, and we appreciate the opportunity to present you with our views.

You have also said you do not want to hear from people who have nothing to say but "no more seats." -- Maybe that explains the low turnout at some of your meetings.-- I speak in jest, of course.

We are here to give you some serious suggestions as to how you can meet the guidelines imposed by Justice de Weerdt, and yet provide assurances to Aboriginal peoples that their rights will be protected in the new western territory government.

There is a broad range of options available for accomplishing this. At the end of my presentation, I will be providing you with no less than 13 suggestions. We understand that some of our preferred options may not be to the taste, or in the short-term interests, of some MLAs. But we urge all MLAs and Ministers to set aside their own personal and political interests. Let's all think, instead, of what will be best for all of the peoples who now share this territory, and who will have to live together here in the future.

If there is one thing we know, it is that the electoral boundaries debate has not been good for relations between Aboriginal and non-Aboriginal people. It has not been good for relations between residents of the small communities and urban residents. It has especially not been good for developing a climate of trust between the Aboriginal governments of the new Northwest Territories and the public territorial government.

You have also said you do not want people to rehash the events of the last few months in these hearings. We too want to discuss alternatives that will help build harmony and better, more respectful relationships in the future. But we must, without "rehashing," add some facts to clarify the information your Committee has provided to the public.

The first two bullets of your backgrounder say:

- It is a well-established practice in the Northwest Territories, as in the rest of Canada, to institute a Commission from time to time to examine and make recommendations on the electoral boundaries to the Legislative Assembly of the Northwest Territories.

- In light of division, and the changes to the make-up of the Legislative Assembly that the loss of the 10 Nunavut ridings would entail, the Legislative Assembly established an Electoral Boundaries Commission on June 1, 1999.

This makes it sound as if establishing the 1998 Electoral Boundaries Commission was normal-- even expected. I'm sure your committee didn't intend to be misleading here. But the establishment of the 1998 Electoral Boundaries Commission was anything but a normal and expected event.

Let's look at the events leading up to the establishment of the Boundaries Commission:

First, the Constitutional Working Group was set up in 1996. To us, it embodied a government-to-government relationship between representatives of Aboriginal governments, and representatives of the public territorial government.

This group was supposed to finish the work started in 1982 by the Western Constitutional Forum-- the Bourque Commission-- and the Constitutional Development Steering Committee. Its job was to come up with detailed proposals for a new form of government-- to balance collective Aboriginal rights and individual democratic rights-- in the Legislative Assembly of the new western territory.

The Metis of the western territory have always been among the strongest supporters of this kind of constitutional development for the north. Our people are scattered throughout the north. We're a minority in most communities-- except of course here in the south Slave. One of our best chances of having our Metis rights and interests protected was through guaranteed representation at the territorial level.

That's something we've backed as the Metis Nation for more than 15 years. Many Metis voted in favour of division of the NWT in 1982, because we were assured that our rights would be protected in a new western territory constitution and government. Many of us voted in favour of the division boundary in 1992, for the same reason. Probably the new territory of Nunavut would not have happened without our support.

Like most NWT Aboriginal people, most Metis did not worry too much about previous boundaries commisssions, because we thought everyone agreed that the NWT government was only a transitional body. It would eventually be replaced by a new form of government, to which we would formally consent, in which we would be represented, and which would, in part, implement our inherent right of self-government.

Just look at the Bourque Report of 1992, if you don't believe me. Metis rights were spelled out there, to be included in the new constitution. We still like that report, and we want it implemented.

Proposals on the number and boundaries of ridings were an integral part of the constitutional development mission. It was in the context of the constitutional debate that the subject of an Electoral Boundaries Commission came to our attention late in 1997. That's when Yellowknife Frame Lake MLA Charles Dent, who was also the Minister for Western Transition, raised the matter in the Constitutional Working Group. Mr. Dent then commissioned a discussion paper from within the GNWT.

The Aboriginal Summit considered the discussion paper in January of 1998. We directed our representatives on the CWG, including the Metis representative, to take the position that no changes to electoral boundaries should be made before the 1999 election. The Summit wrote to Michael Miltenberger, who was then the chairman of the Western Caucus of MLAs, expressing this view.

The MLAs agreed with the Summit's perspective, and committed themselves to a 14-seat western Assembly. They even went so far as to request the necessary changes to the federal N.W.T. Act to permit a 14-seat Assembly.

After the April, 1998 release of the CWG's "Common Ground" workbook, some Aboriginal leaders, including myself, said we preferred the "government to government" approach to constitutional development. This approach would allow tribal and First Nations governments-- including those of the Métis-- to develop relationships with the territorial government and among themselves. This would be done mainly through intergovernmental agreements. The concept was that of a federation. Intergovernmental agreements are a standard feature of Canadian federalism that could fulfill many of the same purposes as direct representation of Aboriginal governments in the Legislative Assembly. Nevertheless, the option of guaranteed Aboriginal representation in the legislature was left open. (See diagram.)

Some MLAs, especially those from Yellowknife-- and their constituents-- found this approach very threatening. They were afraid that Aboriginal governments would be too powerful-- they would cost too much-- and they would take jobs away from Yellowknife.

None of these things are true. We believe these fears are based on misunderstanding, both of the approach and of Aboriginal leaders' support for it. That's unfortunate, because a government to government approach seems to be the only choice we have left now, given the court ruling. To quote from Gurston Dacks, an eminent professor of political science who addressed mayors and chiefs in Hay River only last week:

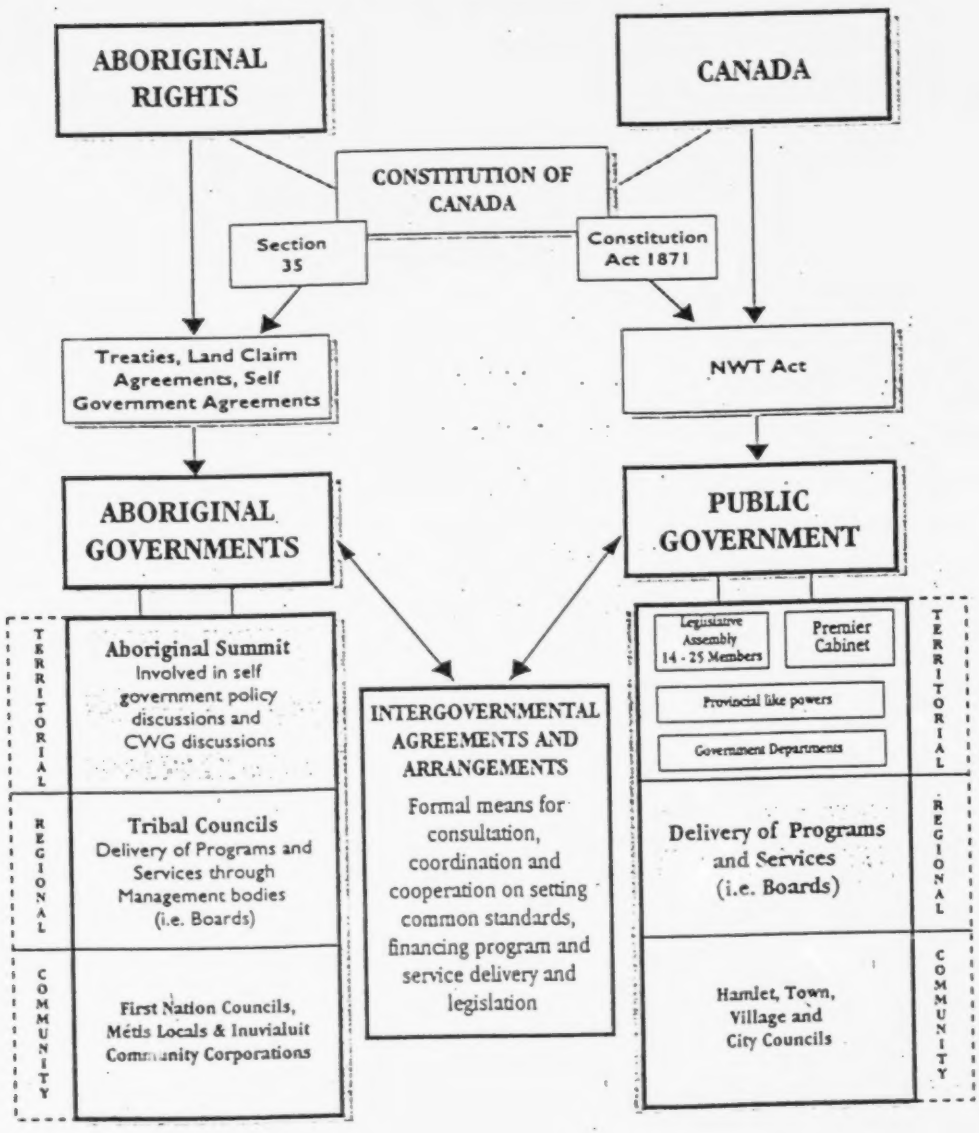
"The prospects for self-government in public government appear to have greatly declined... It seems certain that the courts are wedded to the liberal democratic political philosophy... So setting aside a guaranteed minimum proportion of seats for First Nations people is out. Everyone gets one vote... Giving the MLAs who represent First Nations a veto over legislation that affects their rights particularly directly, that's out too... There is now only one table for implementing the inherent right-- the self-government table."

THE CURRENT LANDSCAPE

The following diagram reflects the way that government institutions are currently structured and is the basis for constitutional development for a new western territory.

ABORIGINAL AND PUBLIC GOVERNMENT

A picture of the existing framework which provides the basis of constitutional development for a new western territory



Back in the spring of 1998, some MLAs' interpretation seemed to be that the Aboriginal leaders were withdrawing from the constitutional process. This, too, was untrue. But the MLAs decided to take matters into their own hands, and institute an Electoral Boundaries Commission.

There were other factors that led some of the MLAs to reverse themselves. But this political spat seems to have been a very large part of it.

Summit members, including myself, learned informally in the spring that MLAs had started talking about an electoral boundaries commission again. So the Summit requested a meeting with the western caucus of MLAs. At the June 1 meeting, the Summit reiterated its position that no changes should be made before the 1999 election, because this would prejudice the constitutional process. Nevertheless, a majority of MLAs voted to establish the boundaries commission.

I for one felt betrayed. I won't speculate on why a few Aboriginal MLAs from outside Yellowknife chose to vote in favour of establishing the commission. But they were enough to swing the vote. This alone shows how easy it will be for a block of seven Yellowknife MLAs to get their way in a 19-seat house. They can get their way now, with four of fourteen!

It is important to state for the record that this Electoral Boundaries Commission, unlike any previous NWT commission, was established over the strong objections of Aboriginal leaders-- including Metis. The fact that the Electoral Boundaries Commission was established, and made recommendations, was a major element in the Friends of Democracy's case. The GNWT's case, and that of the five Aboriginal Intervenors, would have been stronger if the Electoral Boundaries Commission had never existed.

Similarly, the Aboriginal Intervenors would have had a much better chance of getting their case heard at the Court of Appeal, if the GNWT had chosen to appeal.

The events around the GNWT's decision not to appeal give us cause for grave concern-- concern about the health of our system of government here in the north. The so-called Friends of Democracy seem to have done nothing but ensure greater urban representation in a government that has become profoundly undemocratic.

There have always been concerns about accountability in the so-called "consensus" system. Unlike a system of party politics, we as voters do not get to scrutinize competing party platforms before an election. Instead, we vote for MLAs as individuals. The MLAs, not the voters, choose the Cabinet, and the Cabinet then sets its priorities for the next four years. This system of government is a lot like that of a municipality in the south.

It's a system that can function adequately, as long as the issues the council is dealing with are fairly simple, there is enough money to spread around and as long as those elected have common values and interests. The MLAs are supposed to hold the Cabinet accountable by asking questions and raising issues. Cabinet, in turn, is supposed to respond to direction received from the MLAs.

Well, that's stopped happening in our Legislative Assembly.

A motion was passed in the Legislative Assembly, calling for the government to appeal the decision of Justice de Weerdt in the Friends of Democracy case. Cabinet nevertheless refused to appeal. There's no mention of this motion in your information package.

Your committee has a mandate to listen to any and all governance issues, not just electoral boundaries. So let's call a spade a spade, and say consensus government is just not working. The Cabinet is acting like a junta-- the motion to appeal wasn't the only one they have ignored lately. And Ministers are playing divide and conquer with the Aboriginal leadership. The biggest example of this, is the GNWT's "party line" on resource revenue sharing.

I remember being told, both as a member of the public and as an Aboriginal representative on the Western Leaders' Coalition, that the funds from the new formula financing agreement would be adequate to look after our western program needs, with careful management. That agreement was only signed off last year.

By the way, I want to state for the record that some Ministers are now saying that because Nellie Cournoyea and I were members of the Western Leaders' Coalition, the Aboriginal governments of the west somehow "consented" to the formula financing arrangement. That's not the understanding we had when we joined the group. The group was to bee a western watchdog, and an informational table, nothing more. The Western Leaders' Coalition did not even constitute full and meaningful consultation. let alone consent.

Now, suddenly, Mr. Dent says it's panic time. Where did the GNWT's multi-million dollar financial crisis come from? So far, I haven't seen any proper explanation. Is it a real crisis, or a manufactured one? If it's real, who's responsible-- and have they been fired yet?

I find it especially ironic that we're talking about a fiscal crisis-- and at the same time we're talking about adding five MLAs, at a cost of about $300,000 per year! If MLAs are really serious about both issues, how about adding the seats, but leaving the Legislative Assembly budget the same as it is with 14 MLAs?

Second, in the unlikely event that the GNWT achieves a resource revenue sharing agreement with the feds and the Aboriginal governments any time soon-- how will that help their bottom line over the next two years? If you listen to the speeches, it sounds as if there's gobs of money for the taking. Well, there isn't, at least not now. Federal royalties on existing developments are modest, and if the GNWT were to get a share, they would only be able to keep about 20 per cent of it, under the formula financing agreement.

The GNWT was more honest about this four years ago, when the Deputy Minister of Finance explained to the public that what was important about a Northern Accord was not the amount of money. It was the fact that it would be GNWT's own revenue, and that it would eventually lead to control of the resources themselves.

Does the Cabinet think we were all born yesterday? They will have to: 1., get an agreement with Aboriginal governments as well as the feds on who, where, when and how much of the revenue will be transferred, 2. renegotiate the formula financing agreement in mid-stream, and 3. have a whole bunch more development, before they will get any significant money from resource revenue sharing.

Maybe a whole bunch more development isn't what we want.

On the one hand the Minister of Finance and the Minister of RWED are using every possible forum to scare the small communities and their leaders with the prospect of cuts to government programs and government jobs.

On the other, they're offering them a slice of the pie-- and that looks awfully tempting if you're a leader in a small, cash-strapped community-- even if you haven't seen exactly how big the slice will be. The phrase, "selling our birthright for a mess of potage" comes to mind-- along with "pie in the sky."

Ministers are scapegoating regional and tribal Aboriginal governments-- including the South Slave Métis-- most of whom have the legal mandate to deal with lands and resources issues, and who are asking honest questions. The Cabinet seems to be playing divide and conquer, and trying to blame the Aboriginal governments for Cabinet's own bad management.

Then again-- they're saying, "let's work together," "let's have an intergovernmental forum." So far, the Aboriginal Summit, which represents the regional/tribal governments, has not received a dime from the GNWT to work on an intergovernmental forum-- resource revenue sharing-- or the electoral boundaries issue. Individual governments, territorial organizations, and even communities, who indicate they will play ball on resource revenue sharing have received funding. Others don't. How are we supposed to assess the information Cabinet provides, without our own independent research? Is this the way to build up trust?

The Metis Nation has always supported consensus government. Well, I'm hear to tell you that as a direct result of what has been happening lately, maybe we don't any more. Maybe it is time the Metis supported party politics. This is an issue I will be discussing very seriously with the members of the Metis Nation over the summer.

Finally, Mr. Chairman, I said I did have some suggestions for dealing with the electoral boundaries issue and Bill 15. These are, at best, stopgap measures, but it is important to get them on the record. We, like yourselves I imagine, are somewhat disappointed that there has not been more public discussion of options such as these. Again, I should point out that the Aboriginal groups, collectively or individually, have not received any resources to do work on this issue, in spite of several meetings with Ministers and MLAs, and a variety of proposals.

Better late than never, here are our suggestions. It is our hope, Mr. Chairman, that your committee and the Cabinet will see their way clear to refining some of the more promising ones and making the necessary amendments to Bill 15.

Thank you for your time and patience.

Options for a Political Solution:

Type A: Minimize the damage by keeping the number of additional seats to a minimum

This is the Métis Nation's preferred type of solution, and the solution preferred by a majority of members of the Aboriginal Summit. The options of this type are not mutually exclusive, but could be taken together as a package.

1. **Add one seats, instead of five, and re-assign voters to meet the 25% rule**

The guidelines imposed by Justice de Weerdt can be met by adding only one seat to the Assembly, rather than five. This does involve re-assigning voters from the more populous ridings into one or more of the smaller ridings, for example, some voters now in Yellowknife North might be enumerated in Tu Nedhe. Yes, this might violate some natural geographic and cultural boundaries, and it might affect some MLAs' election chances. But as a time-limited, short-term quick fix, it is by far the best solution to the problem created by Justice de Weerdt's decision. We are aware that this would be acceptable to the Friends of Democracy, as well as ourselves.

2. **Redistribute riding populations more evenly among the Yellowknife ridings**

This measure by itself would not meet the judge's guidelines, but, in conjunction with one added seat, could be of assistance.

3. **Allow Aboriginal people resident in urban centres to vote in their home ridings**

This would again assist in reducing the number of additional seats required to meet the guidelines, by removing a substantial number of voters from Yellowknife constituencies to other, smaller ridings. It could also assist in providing these people with better representation, and is consistent philosophically with a recent Supreme Court ruling on the right of off-reserve status Indians to vote in band elections. Many Aboriginal people resident in Yellowknife still consider the MLA from their home riding "their" MLA.

4. **Add a "sunset clause" to the legislation, so that it is clear this is a temporary fix**

A sunset clause may be useful for other types of solution as well.

Type B: Various forms of guaranteed representation for Aboriginal people in the Assembly

While these options are attractive to the Métis, they are not popular among non-Aboriginal people. Some may see them as constitutional development by the back door. They may also be subject to another Charter challenge. Given the de Weerdt ruling , it is debatable whether any meaningful form of guaranteed representation is legally possible.

5. **Add three to eight guaranteed Aboriginal seats to the Assembly**

Stephen Kakfwi proposed adding three guaranteed seats for the three Aboriginal peoples constitutionally recognized by Canada: the Dene, the Metis and the Inuvialuit. This would be a compensating measure for the additional seats called for by the judge's decision. Some members of the Aboriginal Summit have called for eight guaranteed seats, one each for the eight Aboriginal peoples of the western NWT. Unfortunately, these proposals were made before the mathematics of the de Weerdt decision were understood. It is no longer clear to us how it will be possible to add guaranteed Aboriginal seats without adding more seats for urban ridings.

6. **Make one of the new Yellowknife seats a guaranteed Aboriginal seat**

This proposal cannot be seen as much help for Aboriginal people in the communities. The Aboriginal people of Yellowknife are from all over, including Nunavut and southern Canada. They don't have a lot of interests in common, as Aboriginal people. And their economic interests are not that different from those of other residents of Yellowknife. So the "Aboriginal MLA" can be expected to vote with the other Yellowknife MLAs most of the time. The Métis Nation does not favour this option, at least by itself. It may have a place as part of a package solution.

7. **Guaranteed regional or Aboriginal representation in Cabinet**

The most common proposal here is a six or seven member Cabinet, with two Cabinet members from north of Great Slave Lake, two from south of Great Slave Lake and two from Yellowknife, possibly with an additional seat for the Premier. The Métis Nation does not favour this proposal either. Legislating regional representation on Cabinet is too inflexible. And it does not really make a great deal of difference whether there is one Yellowknife MLA in Cabinet or several. What if, heaven forbid, all the MLAs from north of the lake turn out to be unsuitable as Cabinet material? Or all the Yellowknife MLAs, for that matter?

Type C: An oversight mechanism to safeguard Aboriginal rights

8. **Create an Aboriginal or regional "Senate"**
This body could have representation from the eight regional/tribal governments, and report to an assembly of community leaders or the public at large. It would be empowered to scrutinize proposed legislation and perhaps policy, for its impact on Aboriginal rights. It would most likely have a "suspensive" veto, like the Senate of Canada, rather than an absolute veto. In other words, it could delay legislation before it is finally passed by the Assembly, but not stop it forever. The main objections to this have been two-fold: it is constitutional development by the back door; and, it would cost too much. We think adding five seats is constitutional development by the back door, and will cost too much.

9. **Create an Aboriginal "ombudsman" inside or outside the Assembly**
The Métis Nation believes it is preferable for such a position, if it is created, to be independent of the legislature.

10. **Resource Aboriginal governments to perform this function on a temporary basis**
Aboriginal organizations are often told not to worry about possible violations of Aboriginal rights by territorial legislators. After all, they say, you can go to court. Unfortunately, most Northwest Territories Aboriginal groups lack the resources to properly scrutinize a broad range of legislation or take court action, unless they are funded by the federal or territorial governments. The GNWT will save money in the long run if they provide modest resources to the Aboriginal groups, if only on a test case or pilot basis, to perform this task over the next four years.

Type D:
An agreement between the GNWT/Legislative Assembly and Aboriginal governments regarding future measures
The Métis Nation, along with some other Aboriginal Summit members, views this set of options as the most promising avenue for a political solution, preferably in combination with Type A or C, or, as the alternative if these have been ruled out.

11. **A commitment between the Cabinet and Aboriginal leaders to work together**
An agreement of this nature was almost reached in 1996, and can be revived, provided the GNWT is willing to provide some level of resources for meetings and research. To date, we have heard promises but seen no cash. Such an agreement might be reached by the July Assembly sitting, assuming the Cabinet shows some flexibility.

12. **A process agreement or protocol**
This is a more detailed version of 11., setting out the participants, the schedule of meetings and possibly subject areas. This more detailed agreement might be possible by September's Assembly session.

13. **Legislation providing for an Electoral Reform Commission or independent body**
The Metis Nation would prefer an independent body that reports to the Aboriginal leadership as well as the Legislative Assembly, to a formally-constituted Electoral Reform Commission. The legislation would oblige the incoming Assembly to set up this body before the end of its term, in a similar manner to the way the Government of Canada was obligated to hold intergovernmental constitutional conferences on Aboriginal rights. Its mandate could also be set out, in part or in whole, in the legislation. It could, for example, be tasked to research and develop some of the other options for future implementation, such as an Aboriginal Senate. Perhaps, in view of what are becoming severe problems with our system of government, it should have a relatively broad mandate.

David Hamilton /YK /LEG
From: slaven /unix [slaven@yellowknife.com]
Sent: Monday, July 05, 1999 9:38 PM
To: roy.erasmus /unix
Cc: David Hamilton /YK /LEG; slaven /unix
Subject: SCGO and Bill 15

Mr. Erasmus,

As a voter in the NWT, I just wanted to make a couple of comments regarding Bill 15 and your Committee's review.

First, I understand there has been some discussion re: how Cabinet seats should be allocated in the new Assembly. I have no problem with that; the '4 East 4 West' scenario that held before division was a reasonable tradition, and the suggested '2 North 2 South 2 YK' scenario that many are discussing for the new territory also seems reasonable. However, I've heard that some are suggesting that this be actually included in the legislation, rather than remaining as merely a 'tradition'. I think this would be a bad idea; this is an area where flexibility should be preserved. I would encourage you and the members of the Committee to refrain from including something like this in the Legislative Assembly and Executive Council Act (or in any other act).

My second comment is a minor one. I think it would be appropriate for all of the Yellowknife ridings (with the possible exception of Weledeh) to retain the name 'Yellowknife' in their descriptions along with their geographic descriptions: that is, 'Yellowknife Centre', 'Yellowknife Great Slave', 'Yellowknife Frame Lake', 'Yellowknife Kam Lake', 'Yellowknife South', 'Yellowknife Range Lake'. I would appreciate your considering this suggestion.

As a final note, please understand that these are merely my comments as a private citizen. In my position as president of Friends of Democracy, my only comment is that the organization has chosen not to comment on Bill 15.

Thank you. I know how important the work of the Committee is, and I wish you the best in your deliberations.

Robert Slaven

Robert & Linn-Marie Slaven www.yellowknife.com/slaven
...with Stuart, Rebecca, Mariann, Kristina, Elizabeth, and Robin too
'Man is that he might have joy—not guilt trips.' (Russell M. Nelson)

WALLBRIDGE & ASSOCIATES
barristers and solicitors

10 July 1999

Mr. Roy Erasmus
Chairman
Bill 15 Hearings on Electoral Boundary Changes
Standing Committee on Government Operations
Yellowknife, NT

BY HAND

Dear Sir:

Re: Bill 15

I followed with great interest the work of the Electoral Boundaries Commission and indeed I sat in the Legislative Assembly on the day their report was tabled. Since that time I have watched with dismay as the process has continued along leading to a court case and now to the work of your committee. The following issues are of concern to me and I ask that you and your committee consider them.

(1) A great many of the proponents of the "do nothing approach", or the "four seats for Yellowknife are enough and maybe more than enough approach", are fellow aboriginal people who unfortunately do not acknowledge that there are almost 4,000 aboriginal people in Yellowknife who are grossly underrepresented in an Assembly with only four MLA's for Yellowknife. There are in fact more aboriginal people in Yellowknife than in any other community in the entire N.W.T..

That you, an aboriginal person, are an MLA for Yellowknife is a good sign that the system in place in the N.W.T. for representation of all people is working. We have the same system of government in the N.W.T. in so far as representation, one person, one vote, as is the case throughout Canada. It works. You effectively represent 25% of the four Yellowknfie MLA's and this is a marginally higher percentage than the total aboriginal to white population of Yellowknife.

I happen to believe that when Bill 15 is passed, in its present form or with slight modifications, and there are seven MLA's for Yellowknife in the next Assembly, that the percentage of aboriginal MLA's for Yellowknife will be even greater than it is now. I further believe that on many issues, certainly on issues of importance to aboriginal people, the Yellowknife, aboriginal MLA's, people situated in their life exactly as you are, will exercise their vote in a way that promotes an aboriginal position.

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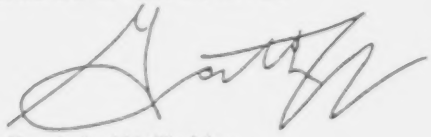
(2) Land claims are, in my opinion, the single most important issue facing aboriginal governments today. The Government of the N.W.T. on the other hand has a full slate of concerns. I do not see how it can be expected that the process of effective representation by population for all citizens of the N.W.T. can be halted for a time that almost certainly will be measured in years while land claims are settled. That self government will be included in land claims agreements is now a forgone conclusion. In my mind it would be better to have a government with full legitimacy, by way of adhering to the Canadian Charter of Rights and Freedoms, at the negotiations table rather than otherwise. Any deal that can then be negotiated can be expected to stand the test of public opinion. There is no sense in negotiating an agreement for a land claim complete with self government that will not be acceptable to the population as a whole. If we can not agree as a collection of diverse peoples than I predict lawsuits, petitions to the federal government and outright defiance of any agreement. No one wins if it takes another generation or two to get a deal just because people can not be convinced to negotiate in good faith because there is too little good faith to go around. Adhering today to accepted and proven principles of democratic representation can only facilitate the growth of good faith.

(3) In conclusion I have to say that my primary concern is that we as aboriginal people can not expect to have aboriginal rights flourish while trampling basic human rights. One person, one vote is the best system ever devised to govern. This continues to be true in the late twentieth century and no doubt this will continue to be the case well into the next century. A people who have been trodden upon for far too long can not expect to hold their collective heads high if, to get the upper hand, they in turn trod on the basic human rights of others.

Thank you for the consideration of my viewpoints on these issues.

Sincerely,

WALLBRIDGE & ASSOCIATES

Per: 

Garth L. Wallbridge

INUVIK

JUL 09 1999

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Office of the Mayor

July 6, 1999

ATTENTION MR ROY ERASMUS
CHAIR ~ Standing Committee of Government Operations
GNWT – Legislative Assembly
Box 1390
Yellowknife NT X1A 2L9

Dear Mr. Erasmus

re: PUBLIC REVIEW – BILL 15 ELECTORAL BOUNDARIES AMENDMENTS

At the Inuvik Town Council June 23, 1999 Regular Council Meeting, a discussion occurred regarding the electoral boundaries amendments presentation made in our community on June 15 and 16, 1999. The following motion was passed:

> **"That Inuvik Town Council supports the provision of two (2) ridings for the Inuvik community with two (2) representatives elected at large;**
>
> **AND FURTHER directs the Mayor to seek the support of the Nihtat Gwich'in Council and the Inuvik Community Corporation of this initiative, and that the Standing Committee on Government Operations be urged to consider the initiative for the Inuvik community."**

On behalf of the Council and the residents of Inuvik, I respectfully urge your committee to consider the provision for two (2) ridings with two (2) representatives for our community, elected at large.

Sincerely

G Roach

George Roach
Mayor

GR/mw

c Floyd Roland, *MLA ~ Inuvik*